

In re) Fair Hearing No. T-12/09-665
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 Appeal of)

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, Office of Vermont Health Access Plan "locking in" the petitioner to one primary care physician and one pharmacy. The issue is whether the petitioner should be subject to the "program integrity" provisions in the regulations due to prior misuse of a controlled medication. The following findings of fact are based on the representations of the parties and evidence submitted at and subsequent to a hearing in the matter held on January 8, 2010, and telephone status conferences held on February 5 and March 5, 2010.

1. The petitioner lives in Bennington and is a recipient of VHAP. In April 2008 the Department received information from one of the petitioner's doctors and from the Department of Corrections that the petitioner had failed a "pill count" check with the Probation and Parole, and that during the period March 2007 to March 2008 he had obtained overlapping prescriptions for a narcotic pain reliever from three separate doctors and two separate pharmacies. The

petitioner disputes the accuracy of this information.

2. On May 2, 2008 the Department sent the petitioner a notice that effective June 1, 2008 he would be required to designate one doctor and one pharmacy for his prescription coverage under VHAP. The notice stated that if the petitioner did not choose his own doctor and pharmacy the Department would select ones for him in his area. When the petitioner did not respond, the Department proceeded to assign a designated doctor and pharmacy to him.

3. The Department essentially repeated this process in February 2009, notifying the petitioner that he could choose his own doctor and pharmacy. Again the petitioner did not respond.

4. On June 9, 2009 the Department notified the petitioner that his designated physician was Dr. Marcus Martinez in Hoosick Falls, N.Y., and that his pharmacy was Rite Aid in North Bennington, Vt.

5. All the above notices that the Department sent to the petitioner included instructions on how to appeal. The petitioner claims he was ill during much of this time, and the record indicates that he may have been incarcerated as well during some of this time.

6. At any rate, the petitioner filed a request for hearing with the Human Services Board on December 22, 2009. Inasmuch as his appeal can reasonably be considered to be a request to terminate his "lock-in" status, it can be

considered timely.

7. At the hearing, the Department advised the petitioner that it would reconsider its selection of providers if the petitioner could obtain statements from any of his doctors that the current designation of providers was in any way detrimental or threatening to his health. The hearing officer advised him that he could also submit verification from his doctors and Probation and Parole that the Department's initial decision was incorrect.

8. The petitioner has submitted information that criminal fraud charges that appear to have stemmed from his prescription activities in 2007-2008 (see *supra*) have been dismissed. It also appears that the petitioner has filed a professional conduct complaint against one of his doctors. However, to date, he has submitted no other information from any other source pertaining to either his activities in 2007-2008 concerning his prescriptions or to any detriment or threats to his current health.

ORDER

The decision of the Department is affirmed.

REASONS

Pursuant to federal law (Section 1902[a][30] of the Social Security Act) the Department has adopted regulations for "utilization control . . . to safeguard against unnecessary or inappropriate utilization of services

available under Medicaid". W.A.M. § 7107. Under WAM § 7107.1: "When recipient abuse is identified, the recipient's access to care will be limited through a requirement for prior authorization, restriction of selected providers, or other appropriate action." An example given in that regulation of recipient abuse is "obtaining an inordinate supply of a prescription drug, especially those which are potentially addictive".

The above regulations certainly do not contemplate or require a related criminal conviction in order to take effect. Nor do they suggest or require the removal of limitations on access to care if related criminal charges are resolved in the recipient's favor. In this case, given that the Department's action was first taken nearly two years ago, it is the petitioner's burden of proof to establish that either that the underlying basis of the Department's actions was incorrect or that those actions are now detrimental to his health. As noted above, the petitioner has submitted no evidence regarding either showing.

In light of the above it cannot be concluded that the Department did not correctly follow its established procedures in limiting the petitioner's choice of providers. Thus, the Board is bound to affirm the Department's decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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